

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

American Equipment Company, Inc.,)
)
Plaintiff,)
)
vs.)
)
A&L Underground, Inc.,)
)
Defendant.)

C.A. No. 6:06-3568-HMH

OPINION & ORDER

This matter is before the court on A&L Underground, Inc.'s ("A&L Underground") motion to stay the case pending appeal. After a review of the record and the applicable law, the court denies A&L Underground's motion to stay. Pursuant to the Federal Arbitration Act, "[a]n appeal may be taken from . . . an order . . . refusing a stay of any action under section 3 of this title, . . . denying a petition under section 4 of this title to order arbitration to proceed, . . . [or] denying an application under section 206 of this title to compel arbitration." 9 U.S.C. § 16(a)(1)(A)-(C) (1999). However, the United States Court of Appeals for the Fourth Circuit "has not decided whether a stay of the entire action is required pending appeal of an order denying a motion to compel arbitration . . ." In re White Mountain Mining Co., L.L.C., 403 F.3d 164, 171 (4th Cir. 2005). Further, A&L Underground did not file a motion to compel arbitration or a motion to stay the case pending arbitration. A&L Underground filed a motion to dismiss pursuant to Rules 12(b)(1), 12(b)(3), 12(b)(4), 12(b)(5), and 12(b)(6) of the Federal Rules of Civil Procedure. The court denied A&L Underground's motion due to factual disputes regarding the underlying contract. Under these circumstances, the court denies A&L Underground's motion to stay the case pending appeal.

It is therefore

ORDERED that the Defendant's motion to stay, docket number 25, is denied.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
United States District Judge

Greenville, South Carolina

April 3, 2007